IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5674 OF 2005

Smt Mahadevi Shivputrappa Halkude, Petitioner
Vs
Shri Mrutyunjay Bassappa
Tuppad and ors. .. Respondents
Mr A.P.Kulkarni, for the petitioner.
Mr I.S. Ingale, for the respondents.

CORAM : D.B.BHOSALE, J.

DATED : 3rd October, 2005

P.C.:

1. Heard the learned counsel for the parties.

2. Rule, returnable forthwith. Mr.Ingale, learned counsel, waives service for the respondents. By consent of the parties, the petition is taken up for final hearing.

3. By this petition, the petitioner has impugned the order dated 5.7.2005 passed below Exhibit-63 in Regular Civil Suit No.130 of 2000 rejecting the application filed by the petitioner for setting aside the order of "No Cross" passed against the petitioner-plaintiff. It appears that the petitioner was not present in the Court when the witness was offered for cross-examination. Mr.Kulkarni, learned counsel for the petitioner, submits that as a matter of fact there is no order on record recording "No Cross" passed by the trial

Court. However, he is denied an opportunity of cross-examination of the witness solely on the ground that no reason is mentioned in the application for his absence when the witness was offered for cross-examination. Even if it is assumed that the reason mentioned by the trial Court for rejecting his application is correct, in my opinion, interest of justice would be served if the petitioner is allowed to cross-examine the witness. In the circumstances, this writ petition is allowed. The impugned order is set aside. The trial Court shall allow the petitioner to cross-examine the witness and proceed with the further hearing of the suit in accordance with law.

4. Rule is accordingly disposed of.

(D.B.Bhosale, J.)